



IT IS ORDERED as set forth below:

Date: December 02, 2009

W. H. Drake
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:

DAVID BRADLEY VINCENT
KIMBERLY ANN VINCENT,

Debtors.

DONALD F. WALTON, United
States Trustee,

Plaintiff,

v.

DAVID BRADLEY VINCENT
KIMBERLY ANN VINCENT,

Defendants.

CASE NUMBERS

BANKRUPTCY CASE
NO. 08-10885-WHD

ADVERSARY PROCEEDING
NO. 09-1051

IN PROCEEDINGS UNDER
CHAPTER 7 OF THE
BANKRUPTCY CODE

ORDER

Currently before the Court is the Motion for Default Judgment filed by Donald F.

Walton, United States Trustee (hereinafter the "U.S. Trustee"). The Motion arises in connection with an Objection to Discharge filed by the U.S. Trustee against David and Kimberly Vincent (hereinafter the "Debtors"). This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(J); § 1334.

On June 15, 2009, the Debtors filed a voluntary bankruptcy petition under Chapter 7 of the Code. The records of this Court indicate that the Debtors had filed a previous voluntary Chapter 7 petition on January 22, 2001 (Case Number 01-10154-whd), with the Court having entered a discharge in that case on May 11, 2001.

Prior to the expiration of the deadline for objecting to the Debtors' discharge in the instant case, the U.S. Trustee filed a complaint objecting to the Debtors' discharge under section 727(a)(8). The Debtors failed to file an answer. On November 4, 2009, the U.S. Trustee filed the instant motion for default judgment. The U.S. Trustee seeks the entry of a default judgment declaring that the Debtors are not eligible to receive a discharge in this case.

The Debtors responded to the U.S. Trustee's motion on November 18, 2009. The Debtors do not request that the Court set aside the default. In defense of their failure to file an answer, the Debtors assert that they believed that their former bankruptcy counsel, whom this Court permitted to withdraw from representation on July 22, 2009, had filed an answer on their behalf. Even if the Court found the Debtors' excuse for failing to file an answer to be sufficient, the Court cannot set aside the default when the Debtors have proffered no

meritorious defense to the suit. *See* FED. BANKR. P. 7055 (“For good cause shown the court may set aside an entry of default”); *Rogers v. Allied Media, Inc. (In re Rogers)*, 160 B.R. 249, 251-52 (Bankr. N.D. Ga. 1993) (Drake, J.) (considering whether four factors exist when determining whether “good cause” exists to set aside an entry of default: (1) whether the defaulting party has acted promptly to vacate the default; (2) whether the defaulting party has presented a plausible excuse explaining the reasons for the default; (3) whether the defaulting party asserts a meritorious defense; and (4) whether the nondefaulting party will be prejudiced by setting aside the default).

Pursuant to section 727(a)(8), a debtor shall not be granted a discharge if the debtor has been granted a discharge in a case commenced within eight years before the date of the filing of the petition. *See* 11 U.S.C. § 727(a)(8). According to the facts established by the U.S. Trustee in this case, the Debtors' discharge must be, and hereby is, **DENIED**. The U.S. Trustee's Motion for Default Judgment is, therefore, **GRANTED**. Judgment in favor of the U.S. Trustee shall be entered.

END OF DOCUMENT